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28 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

14 LARS JENSEN, an individual,

15 *Plaintiff,*

16 v.

17 NATALIE BROWN, in her individual and
18 official capacities as Administrative Officer at
19 Truckee Meadows Community College; JULIE
20 ELLSWORTH, in her individual and official
21 capacities as Dean of Sciences at Truckee
22 Meadows Community College; ANNE
23 FLESHER, in her individual and official
24 capacities as Dean of Math and Physical
25 Sciences at Truckee Meadows Community
26 College; KARIN HILGERSOM, in her
27 individual and official capacities as President of
Truckee Meadows Community College;
MARIE MURGOLO, in her individual and
official capacities as Vice President of
Academic Affairs at Truckee Meadows
Community College; MELODY ROSE, in her

Case No. 3:22-cv-00045-ART-CLB

**PLAINTIFF'S MOTION TO AMEND
RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
THE FIRST AMENDED VERIFIED
COMPLAINT**

ORAL ARGUMENT REQUESTED

1 individual and official capacities as Chancellor
 2 of the Nevada System of Higher Education,

3 *Defendants.*

5 Plaintiff Lars Jensen, by and through his undersigned counsel, move this Court for leave
 6 to Amend his Response in Opposition to Defendants' Brown, et al., Motion to Dismiss the First
 7 Amended Complaint filed on April 13, 2022, (ECF No. 33)(the "OMTD") in light of new
 8 evidence that was turned over to Plaintiff on September 7, 2022, as a result of a public records
 9 request made on September 16, 2021. This Motion to Amend Plaintiff's OMTD is made and
 10 based upon the following Memorandum of Points and Authorities, the Verified Complaint (ECF
 11 No.1)(the "complaint") and exhibits thereto, the First Amended Verified Complaint (ECF No.
 12 8)(the "FAC") and exhibits thereto, Defendants' Brown, et al., Motion to Dismiss (ECF No.
 13 21)(the "MTD"), the exhibits and declarations filed in support of the OMTD, the Declaration of
 14 David Demers (ECF No. 31)("Demers Decl.") and exhibits thereto, the Declaration of Lars
 15 Jensen (ECF No. 32)("Jensen Decl.")and exhibits thereto, Defendants' Brown, et al, Reply to
 16 the Opposition to the Motion to Dismiss, (ECF No. 34)(the "Reply"), the pleadings and papers
 17 on file herein including documents attached to or incorporated into the pleadings, and such other
 18 evidence and argument as the Court may allow.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. BACKGROUND**

25 Plaintiff, Dr. Lars Jensen, filed his Verified Complaint on January 26, 2022. Two days
 26 later, on January 28, 2022, Plaintiff filed his FAC. Defendants filed their MTD on March 15,
 27 2022, Plaintiff filed his OMTD on April 13, 2022, and Defendants filed their reply on May 4,

2022. Prior to this matter being before this Court, Plaintiff was subject to a termination hearing that took place on October 1 and October 22, 2021. In preparation for that hearing, Plaintiff made various public records requests for information on September 16, 2021. Part of the request, which is still not completely responded to, was released to Plaintiff on September 7, 2022, and contained additional "new facts" that clearly show Defendants' intent to retaliate against Plaintiff for his constitutionally protected speech.

Plaintiff respectfully requests this Court to allow leave to Amend his OMTD by including the proposed Exhibit H.

II. **LEGAL STANDARD**

Under Federal Rule of Civil Procedure 15(a)(2), “...a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” The rule goes on to state that Courts “should freely give leave when justice so requires.” *Id.* When deciding whether to grant a motion for leave to amend the Court should assess the following five factors: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether plaintiff had previously amended his complaint.” *Madrid v. Hutchings*, 2022 WL 4110368 at 27 (D. Nev Sept. 6, 2022)(quoting *In re W. States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 738 (9th Cir. 2013)). The Ninth Circuit has held that the presentation of “new facts” combined with “satisfactory explanation for his failure to fully develop his contentions originally” as sufficient grounds for a District Court to grant leave to amend. *See Bonin v. Calderon*, 59 F. 3d 815, 845 (9th Cir. 1995)(citing *Allen v. City of Beverly Hills*, 911 F. 2d 367, 374 (9th Cir. 1990)).

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1 **III. ANALYSIS**

2 Dr. Jensen's Motion for Leave to Amend his OMTD is based on new facts discovered in the
 3 delivery of emails from a public records request. The pertinent email chain disclosed through the
 4 records request reveals that Defendant Julie Ellsworth and Defendant Anne Flesher coordinated
 5 with others at TMCC prior to the Math Summit on January 21, 2020, to retaliate against
 6 Plaintiff's constitutionally protected speech.

7 First, this email chain demonstrates that Defendants' empty claim of Plaintiff creating a
 8 "conspiracy theory" is wrong and that in fact at least two of the named Defendants did in fact
 9 specifically target Plaintiff prior to the Math Summit on January 21, 2020. *See MTD 3:6-10* This
 10 email thread also reveals why only Plaintiff was targeted at the Math Summit to use the "Parking
 11 Lot."

12 Second, the email chain also shows that at one-point Defendants were seriously considering
 13 having police present to arrest Dr. Jensen because they felt his professionally articulated
 14 concerns were "bullying." Prior planning to have the police present would provide support for
 15 Plaintiff's claim that the Math Summit was a public event.

16 Third, the overall email thread demonstrates intent by Defendants Julie Ellsworth and Anne
 17 Flesher to discriminate against Plaintiff because Defendants did not approve of the content of his
 18 speech regarding policy implementation for math curriculum at Truckee Meadows Community
 19 College that dealt with matters of public concern. In Defendants' MTD they state that Plaintiff's
 20 prior emails "...do not support the First Amendment claims and can be put aside for this
 21 analysis." *See MTD 9:22-23* This newly discovered email thread reveals that Plaintiff was
 22 targeted specifically for disciplinary action for his prior speech in emails. Plaintiff originally
 23 requested these emails through a public records request on September 16, 2021, with a request

1 for delivery before October 1, 2021, so they could be used in his termination hearing.

2 Defendants' delivery of the emails occurred on September 7, 2022 – almost one year later. This
3 delay severely hurt Plaintiff's ability to defend himself at the termination hearing and pleadings
4 before this Court.

5 Fourth, this email thread clearly demonstrates that Plaintiff was speaking on matters of public
6 concern, raises important questions as to whether the speech was as a private citizen or public
7 employee, shows that the adverse employment action was based on the Plaintiff's protected
8 speech, reveals that Defendants' lacked justification for treating Plaintiff differently, and shows
9 that the basis for the adverse employment action was the protected speech. Under the clearly
10 established case law in the Ninth Circuit, these newly discovered facts meet the tests set out for
11 First Amendment Retaliation. *See Eng v. Cooley*, 552 F.3d 1062 (9th Cir. 2009); *Demers v.*
12 *Austin*, 746 F.3d 402 (9th Cir. 2014).

15 Finally, this email thread also shows that Defendant Ellsworth and Defendant Flesher
16 considered Dr. Jensen's prior constitutionally protected speech as an "attack" on them as
17 administrators, which further supports Plaintiff's state law claims made under the precedent from
18 the *Richardson* case from the Nevada Supreme Court. *See Richardson v. Bd. of Regents*, 70
19 Nev. 347, 366-67 (1954); *See also* Reply 4:13-22.

21 **IV. CONCLUSION**

22 Plaintiff respectfully requests that this honorable Court grant leave to amend his OMTD
23 by inclusion of proposed Exhibit H. This exhibit contains an email thread which demonstrates
24 Plaintiff was targeted prior to the Math Summit on January 21, 2020, for retaliation based on his
25 constitutionally protected speech.

1 For the foregoing reasons, Plaintiff Dr. Lars Jensen respectfully requests this Court to
2 grant the Motion for Leave to Amend his OMTD by including Exhibit H.
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DATED: September 22, 2022

Respectfully submitted,

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